

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Compatible Electronics Inc.

Silverado, CA

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File Number: EB-06-LA-345

NAL/Acct. No.: 200732900010

FRN: 0009767906

FORFEITURE ORDER

Adopted: February 20, 2008**Released: February 22, 2008**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Compatible Electronics, Inc., (“Compatible”), in Silverado, California, for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ On May 23, 2007, the Enforcement Bureau’s Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$10,000 to Compatible after determining that Compatible apparently willfully and repeatedly operated a radio transmitter without a license. In this *Order*, we consider Compatible’s arguments that it did not willfully operate the transmitter, and that the forfeiture amount should be reduced because Compatible has a history of compliance with Commission’s Rules, has made good faith disclosures to the Commission, and has taken remedial measures to ensure future compliance.

II. BACKGROUND

2. On December 22, 2006, the Enforcement Bureau’s Los Angeles Office received a request for assistance from the Air Force Rescue Coordination Center (“AFRCC”) regarding interference to the 406 MHz Search and Rescue Satellite (“SARSAT”) System. Investigation by the Los Angeles Office revealed that the interference was caused by the intentional activation of an unregistered, emergency locator transmitter (“ELT”) at Compatible’s open field testing laboratory near Mission Viejo, California.² After the ELT was turned off, a Los Angeles agent admonished personnel from Compatible and Compatible’s customer, the manufacturer of the ELT in question, that ELTs tested in the United States must be operated in accordance with the Commission’s Rules.

3. On December 26, 2006, a Los Angeles agent contacted, via a three-way conference call, the manager of Compatible, and a representative from Compatible’s customer, and explained that the Commission’s rules had no provisions for open air operation of an ELT on 406.025 MHz.³

¹ 47 U.S.C. § 301.

² ELTs operating on 406.0 – 406.1 MHz must be registered with the National Oceanographic and Atmospheric Administration. *See* 47 C.F.R. § 87.199.

³ *See* 47 C.F.R. § 87.197 (ELT testing must avoid outside radiation. Bench and ground tests conducted outside of an RF-shielded enclosure must be conducted with the ELT terminated into a dummy load.) and 47 C.F.R. § 87.475(d) (The frequencies available for assignment to ELT test stations are 121.600, 121.650, 121.700, 121.750, 121.800, 121.850, and 121.900 MHz.).

4. On March 1, 2007, the Los Angeles Office sent a Letter of Inquiry (“LOI”) to Compatible regarding its activation of ELTs in December of 2006 and asking Compatible how it complied with the Commission’s Rules when testing ELTs. In its response to the LOI, Compatible stated that it “performs tests related to electromagnetic compatibility of pre-production equipment to assist the electronics industry to meet the compliance requirements of regulatory agencies in the US and worldwide. [Compatible is] contracted by local companies to perform testing on their products to determine compliance with FCC, FAA . . . regulations.” Compatible stated that it does not have a license to operate an ELT test station nor does it have an experimental radio station license for 406 MHz. Compatible also stated that the tests were performed at its facility and were being conducted for its customer. Compatible further stated that while its customer was operating the ELT, Compatible was making received signal measurements of the ELT on 121.5 MHz and 243 MHz. Compatible acknowledged, however, that the ELT was operating on 121.5, 243 and 406 MHz and that the December 22, 2006, tests had not been coordinated with the FAA Regional Spectrum Management Office. Compatible also stated that additional testing on 406 MHz took place, with permission from its customer, on December 29, 2006, and that testing on 121.5 and 243 MHz was performed on December 26 and 29, 2006, and January 5, 10, 19 and 22, 2007. Finally, Compatible stated that it was testing on 121.5 MHz and 243 MHz at an open area test site as required by Section 2.1511(a) of the Rules.⁴

5. On May 23, 2007, the Los Angeles Office issued a *NAL* in the amount of \$10,000 to Compatible.⁵ In the *NAL*, the Los Angeles Office found that Compatible apparently willfully and repeatedly violated Section 301 of the Act by operating a radio transmitter without a license. Compatible filed a response to the *NAL* on June 22, 2007 (“*Response*”). In this *Response*, Compatible argues that the *NAL* should be cancelled because Compatible did not operate the transmitter and did not willfully violate Section 301 of the Act. Compatible also argues that if the *NAL* is not cancelled, it should be reduced because Compatible has a history of compliance with the Commission’s Rules; that it made good faith and voluntary disclosures to the Commission; that it did not act alone in this matter; and that it has taken remedial measures to ensure future compliances.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁸ In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁹

7. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy, or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. Section 3(33) of the Act defines “communications by radio” as “the transmission by radio of writing, signs, signals,

⁴ 47 C.F.R. § 2.1511(a).

⁵ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900010 (Enf. Bur., Western Region, Los Angeles Office, released May 23, 2007).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(D).

pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things the receipt, forwarding, and delivery of communications) incidental to such transmission.”¹⁰ Section 87.473(b) of the Commission’s Rules requires that “[l]icenses for ELT test stations will be granted only to applicants to train personnel in the operation and location of ELTs, or for testing related to the manufacturer or design of ELTs.”¹¹ Section 87.475(d) of the Rules states the frequencies available for ELT test stations are 121.600, 121.650, 121.700, 121.750, 121.800, 121.850, and 121.900 MHz and also states that ELT test station licensees must “[n]ot cause harmful interference to voice communications on these frequencies or any harmonically related frequency,” and must “[c]oordinate with the appropriate FAA Regional Spectrum Management Office prior to the activation of each transmitter.”¹²

8. A false ELT activation has the potential to severely impact the search and rescue network, resulting in responder resources being wasted and misdirected. According to the United States Coast Guard (“USCG”), air searches for false ELT activations cost the USCG thousands of dollars per search hour. Additional costs are incurred by rescue coordination centers, support personnel, and ground search and rescue responders. False activations also can cause harmful interference to the Search and Rescue Satellite System and to airplanes and vessels in the vicinity of the signal. Additionally, a false activation may conceal or prevent timely response to a legitimate distress signal.¹³

9. Compatible argues that it did not willfully violate Section 301 of the Act because it did not operate the transmitter and was not aware that the transmitter was operating on 406 MHz until it was informed of that fact by the Los Angeles agents On December 2, 2006. We disagree. Compatible states it is an equipment testing facility, but acknowledges that it does not have a license to test ELTs. Compatible also acknowledges that tests of ELT equipment were conducted at its facility on December 22, 2006; that its personnel were making measurements of received signals as part of the testing of the ELT; and that it became aware that transmissions were being made on 406 MHz when the FCC agent visited their facility after locating the source of the interference to the SARSAT system. Compatible’s attempt to shield itself from liability based on the assertion that its client, not its own personnel, physically operated the ELT during the testing of the ELT at its facility, is unavailing. As the Los Angeles Office correctly found, Compatible provided the testing facilities, apparatus, and services incidental to the unauthorized transmission of communications by radio occurring on 406.025 MHz on December 22, 2006. Thus, Compatible was responsible for the unauthorized unlicensed operation on 406 MHz.¹⁴ Compatible’s assertion that its unlicensed ELT testing and consequent operation of the ELT on 406 MHz was not willful is similarly unavailing. As Compatible correctly asserts in its *Response*, Section 312(f)(1) of the Act, which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....”¹⁵ Compatible acknowledged that even after being advised by the FCC of the interference caused to the SARSAT system by its open field testing of ELTs on 406 MHz, it participated in and performed subsequent ELT testing on 121.5, 243 and 406 MHz at its facility on multiple days between December 22, 2006 and January 22, 2007, in contravention of very specific rules pertaining to appropriate testing procedures and test frequencies for these highly-regulated public safety emergency devices. Therefore we find that Compatible willfully supplied the testing facility, equipment and personnel that performed the

¹⁰ 47 U.S.C. § 153(33).

¹¹ 47 C.F.R. § 87.473(b).

¹² 47 C.F.R. § 87.475(d).

¹³ *Grant Lam*, 22 FCC Rcd 6341 (EB 2007).

¹⁴ *See, e.g., Donald J. Payne*, 22 FCC Rcd 10776 (EB 2007).

¹⁵ 47 U.S.C. § 312(f)(1).

tests that resulted in the violation of Section 301 of the Act.

10. Compatible also argues that the proposed forfeiture amount should be reduced because Compatible did not act alone in this matter. We find that this does not support a reduction of the forfeiture amount. We have previously held that because Section 301 of the Act provides that “no person shall use or operate”¹⁶ radio transmission equipment, liability for unlicensed operation may be assigned to, and forfeitures in the amount of the total base forfeiture of \$10,000 may be proposed for, any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation.¹⁷

11. Compatible further argues that the proposed forfeitures amount should be reduced because it made good faith and voluntary disclosures to the Commission, and because it has taken remedial measures to ensure future compliance. We find that neither of these arguments supports reduction of the forfeiture amount. Reductions based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation.¹⁸ According to the record in this case, Compatible made no good faith or voluntary disclosures or reports to the Los Angeles Office or any FCC official until it was approached by a Los Angeles agent. In terms of Compatible’s remedial efforts, the Commission has determined that it expects the entities it regulates to correct errors when they are brought to the regulated entity’s attention and that such correction is not grounds for a downward adjustment in the forfeiture.¹⁹

12. Finally, Compatible argues that the proposed forfeiture amount should be reduced because it has a history of compliance with the Commission’s Rules. We have reviewed our records and we agree. Consequently, we reduce the forfeiture amount to \$8,000.

13. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Compatible willfully and repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture from \$10,000 to \$8,000 is warranted.

IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Compatible Electronics, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$8,000 for willfully and repeatedly violating Section 301 of the Act.²⁰

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the

¹⁶ 47 U.S.C. § 301.

¹⁷ *Joni K. Craig*, 21 FCC Rcd 10793 (EB 2006) (forfeiture amount reduced on other grounds). We note that Compatible’s customer, AMERI-KING Corporation, for the testing that is described herein also was issued a Notice of Apparent Liability for Forfeiture in the amount of \$10,000. See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900009 (Enf. Bur., Western Region, Los Angeles Office, released May 23, 2007).

¹⁸ See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

¹⁹ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

²⁰ 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

Act.²¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Compatible Electronics, Inc., at its address of record, and its counsel of record, Michael H. Ritter, Esquire.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²¹ 47 U.S.C. § 504(a).